APPENDIX A

RULE 11 F.R.C.P.

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or the later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,-

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost

of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions state below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How initiated.*

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the

specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the

movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

APPENDIX B

Nos. 96-5665/97-5211

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES HUNT BARKER	)	
	)	
Plaintiff-Appellant	)	
	)	
v.	)	ORDER
	)	
BANK ONE, LEXINGTON, N.A., successor to First Security National Bank & Trust Company of Lexington; BANCONE OHIO CORPORATION, an Ohio chartered multi-bank holding company owner of Bankone of Lexington, NA, KIT STOLEN, Individually and as president of Bank One of Lexington, NA; WILLIAM ROUSE, Individually and as former president of First Security Bank & Trust Company of Lexington; JACK CUNNINGHAM, Individually and as trust officer of Bank One of Lexington, NA; R.C. CRANFILL, Individually and as former trust officer of First Security National Bank of Lexington; STOLL, KEENON & PARK; DIANE M. CARLTON, CHARLES E. SHIVEL, JR. sued as Charles Shivel, Esq.; WILLIAM T. BISHOP, III, sued as William Bishop, Esq.; LISABETH ANN TULLY, sued as Elizabeth Ann Tulley, Esq.; STURGILL,	)	

TURNER & TRUITT; DONALD)
STURGILL; ANN STURGILL;)
PATRICK MOLONEY; GARNER)
TURNER; DEBORAH GIBBY;)
WILLIAM RAMBICURE; OGDEN,)
NEWELL & WELCH; SCOTT)
WENDLESDORF; JOHN)
BALLENTINE; JULIUS RATHER;)
MARY JO LEEDS; WALTER MAY;)
LAWRENCE SHERMAN, MARY JO)
MARTIN; JOSEPH JOHNSON;)
MILLER, GRIFFIN & MARKS, P.S.C.;)
THOMAS MILLER;STEVEN AMATO;)
WYATT, TARRANT & COMBS;)
EDWIN HOBSON; WILLIAM)
HOPKINS THATCHER; CHARLES M.)
TACKETT; MARTIN GEBROW, M.D.)
ANGELA DANIEL, R.N.; ROBERT)
GRANACHER, M.D.; DONNA)
WESTPHAL)
)
Defendants-Appellees)

Before: NELSON, SUHRHEINRICH, and GILMAN, Circuit Judges

James Hunt Barker, a Florida resident, appeals a district court judgment dismissing his complaint alleging RICO and civil rights violations and state torts (96-5664), and an order assessing sanctions against him under Fed. R. Civ. P. 11 (97-5211). These consolidated cases have been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. Civ. P. 34(a).

Barker filed this action through counsel in district court in Florida against over forty defendants, including banks, bank employees, law firms, lawyers, a judge, doctors and a nurse. He sought in excess of nine million dollars in damages, and an injunction against any further practice of law or banking by the defendants. He alleged claims of RICO and civil rights violations, as well as the state torts of fraud, malpractice, breach of contract, intentional infliction of emotional distress, and outrageous conduct. The action was transferred to the Eastern District of Kentucky, where most of the defendants were located and the events behind the complaint occurred. Substitute counsel appeared for the plaintiff.

The complaint arose out of a will contest over the estate of E.L. McCann, who died in 1987. One of the banks, as her executor, filed a 1979 will in the probate court in Kentucky, under which Barker was not a beneficiary. He challenged that will on the grounds that the testatrix was incompetent, in favor of a 1972 will under which he was the primary beneficiary. In 1990, the day before the will contest was scheduled to go to trial, Barker and the defendants in the will contest action agreed to settlement terms under which the estate would be divided between beneficiaries of both wills, with Barker receiving approximately $150,000. He signed an authorization for his attorneys

to negotiate the precise terms of the settlement. However, Barker soon changed his mind. The defendants in that action moved the court to enforce the agreement. The court held a hearing, found that a binding agreement had been reached, and enforced the settlement. Barker appealed the decision to the Kentucky Court of Appeals, which affirmed. The Kentucky Supreme Court declined discretionary review. In 1991, Barker filed an action in federal district court in Kentucky against some of the same defendants, alleging a conspiracy to deny him his inheritance. That action was dismissed on the grounds of lack of jurisdiction and claim preclusion. Also, contemporaneous with the instant complaint, Barker filed a duplicative action in the Kentucky courts alleging the same state torts claims against the same defendants.

The various defendants in this action filed a number of motions to dismiss the complaint, which Barker opposed. The district court granted the motions to dismiss, leaving claims against only four defendants who had not been served. The district court subsequently dismissed the complaint as to these defendants and entered a final judgment, from which Barker's counsel filed a notice of appeal naming both plaintiff and counsel as appellants. However, counsel has subsequently withdrawn.

Several of the defendants, mainly lawyers and law firms who

had represented Barker at some point in the past, moved for Rule 11 sanctions. Barker did not respond to the motion, nor to the following accounting of attorneys fees. The district court granted the motion in the full amount of fees claimed, assessing $25,741.01 against Barker alone for fees expended before the Kentucky counsel entered his appearance, and $5,083.62 against Barker and counsel jointly for fees incurred subsequent to the attorney's appearance. Although Barker filed a separate pro se notice of appeal from this order he had not addressed the sanctions issue in his briefs on appeal. Finally it is noted than an additional group of defendants, representing mainly the banks and bank employees, also moved for, and were granted fees as sanctions under Rule 11, against both Barker and counsel, but only counsel appealed from that order, which is being separately briefed in Case No. 97-5787.

Upon review, we affirm the district court judgment dismissing this complaint. No claim was stated by this complaint because, among other reasons, federal district courts lack jurisdiction to review final decisions of state courts, *see District of Columbia Court of Appeals v. Feldman*, 460 U.S. 486 (1983), and the complaint was barred by issue and claim preclusion. *See Randles v. Gregart*, 965 F.2d 90, 92-93 (6th Cir. 1992)(per curiam).

We also find no abuse of discretion in the order assessing Rule

11 sanctions against Barker in favor of the law firm defendants. *See Alia v. Michigan Supreme Court*, 906 F.2d 1100, 1102 (6th Cir. 1990). Not only has Barker failed to object to the sanctions below or on appeal, but the records also fully supports the district court's reasons for imposing them.

Accordingly, the final judgment of April 11, 1996 and the January 13, 1997 order awarding attorneys fees of the law firm defendants as a sanction are affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Leonard Green /s/

Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES HUNT BARKER	)	
	)	
Plaintiff-Appellant	)	
	)	
v.	)	ORDER
	)	
BANK ONE, LEXINGTON, N.A., successor to First Security National Bank & Trust Company of Lexington; BANCONE OHIO CORPORATION, an Ohio chartered multi-bank holding company owner of Bankone of Lexington, NA, KIT STOLEN, Individually and as president of Bank One of Lexington, NA; WILLIAM ROUSE, Individually and as former president of First Security Bank & Trust Company of Lexington; JACK CUNNINGHAM, Individually and as trust officer of Bank One of Lexington, NA; R.C. CRANFILL, Individually and as former trust officer of First Security National Bank of Lexington; STOLL, KEENON & PARK; DIANE M. CARLTON, CHARLES E. SHIVEL, JR. sued as Charles Shivel, Esq.; WILLIAM T. BISHOP, III, sued as William Bishop, Esq.; LISABETH ANN TULLY, sued as Elizabeth Ann Tulley, Esq.; STURGILL, TURNER & TRUITT; DONALD STURGILL; ANN STURGILL;	)	

PATRICK MOLONEY; GARNER TURNER; DEBORAH GIBBY; WILLIAM RAMBICURE; OGDEN, NEWELL & WELCH; SCOTT WENDLESDORF; JOHN BALLENTINE; JULIUS RATHER; MARY JO LEEDS; WALTER MAY; LAWRENCE SHERMAN, MARY JO MARTIN; JOSEPH JOHNSON; MILLER, GRIFFIN & MARKS, P.S.C.; THOMAS MILLER;STEVEN AMATO; WYATT, TARRANT & COMBS; EDWIN HOBSON; WILLIAM HOPKINS THATCHER; CHARLES M. TACKETT; MARTIN GEBROW, M.D. ANGELA DANIEL, R.N.; ROBERT GRANACHER, M.D.; DONNA WESTPHAL)

Defendants-Appellees)

Before: NELSON, SUHRHEINRICH, and GILMAN, Circuit Judges

The Petition for Rehearing En Banc is hereby denied.

ENTERED BY ORDER OF THE COURT

Leonard Green /s/

Clerk